

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION H-2A Program
	CORRESPONDENCE SYMBOL OWS
	DATE June 14, 2002

ADVISORY: FIELD MEMORANDUM NO. 8-02

TO: ALL REGIONAL ADMINISTRATORS

FROM: /S/ Wendy McConnell for
LENITA JACOBS-SIMMONS
Deputy Assistant Secretary

SUBJECT: Agricultural Prevailing Wage Determinations and Agricultural Clearance Orders

1. Purpose. To stress the critical need to review prevailing wage information on criteria and non-criteria job offers and interstate clearance orders prior to acceptance for consideration.

2. References. 20 CFR 653.501, 20 CFR 658.603, 20 CFR 655.102, .104, .107, and ETA Handbook 398: H-2A Program Handbook.

3. Background. Migrant and Seasonal Farmworkers (MSFW) federal regulations published June 10, 1980, at 20 CFR 653.501(d)(4) and (e)(1) require that no state agency shall place a job order seeking workers to perform agricultural work into intrastate or interstate clearance unless the wages offered are not less than the prevailing wages or the applicable federal or state minimum wage, whichever is higher. Regulations at 20 CFR 658.603 assign the Regional Administrator (RA) with responsibility for regular review and assessment of state agency performance and compliance with Job Service regulations, including review of wages offered to Job Service referrals and placements made through the clearance system.

Additionally, H-2A federal regulations published June 1, 1987, at 655.102(b)(9) require that every H2A job offer shall include minimum hourly and/or piece rates of pay provisions. If the worker is paid by the hour, the employer shall pay the worker at least the adverse effect wage rate (AEWR), the prevailing hourly wage rate, or the legal federal or state minimum wage rate,

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whichever is highest. If the worker is paid a piece rate and the rate does not result in average hourly piece rate earnings at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the worker's pay shall be supplemented so that the earnings are at least as much as would have been earned if the worker had been paid at the appropriate hourly wage rate. Additionally, a piece rate shall be no less than the piece rate prevailing for the activity in the area of intended employment.

The regulations at 655.104 (b) and (c) further require that the RA, upon receipt of the H-2A application, shall promptly review the application to determine whether it is acceptable for consideration under the adverse effect criteria of 655.101, 102 and 103. If the requirements are not met, the RA shall not accept the application for consideration and shall notify the applicant within seven calendar days of the date the application was received by the RA. ETA Handbook 398, Chapter C, Section 3 (page I-52), states that clearance orders based on an H-2A job opportunity may not be distributed into the intrastate or interstate clearance system until they are reviewed and approved by the RA in accordance with the agricultural clearance order regulations at 20 CFR 653, Subpart F.

4. Action Required. Regional Administrators are requested to:

(A) Establish a file of current agricultural prevailing wage findings for states in the Region. The file should be updated on a continuous basis, and should consist primarily of National Office prevailing agricultural wage determination memoranda to the Regional Office;

(B) Instruct regional staff reviewing agricultural interstate and intrastate non-criteria and H-2A criteria clearance orders and job offers to promptly (upon receipt by the Regional Office) refer to the regional prevailing wage file to determine if the wage rate on the employer's job order is the approved prevailing wage rate or its equivalent, both in terms of actual dollar amount and piece versus hourly rate. No RA acceptance letter should be transmitted to an employer applicant unless the employer's job offer wage rate has been compared to and matches or exceeds the prevailing wage rate approved by the National Office;

(C) Contact the National Office immediately in instances where no approved prevailing wage has been established, or the established rate is from last harvest season and/or is over one year old, or does not appear in the regional file, in order to determine an acceptable prevailing wage rate for the job order under review.

5. Inquiries. Any questions should be directed to Charlene Giles at 202-693-2950.

